

SEMS DocID

2343390

@COPY**IN THE CIRCUIT COURT OF HANCOCK COUNTY, WEST VIRGINIA**

Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope

CIVIL ACTION NO. 19-C-66JUDGE WILSON 10

Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope

PLAINTIFFS,**v.**

Frontier Industrial Corporation, a foreign corporation;
City of Weirton, a West Virginia municipal corporation
and political subdivision of West Virginia; Mingo

Junction Steel Works, LLC, a foreign corporation;
Non-responsive based on revised scope
Non-responsive based on revised scope an individual; SCM Engineered
Demolition & Explosives Inc., a foreign corporation;
Panhandle Cleaning and Restoration, Inc., a West Virginia
corporation; Rocky Rift Consulting, Inc., a Pennsylvania
corporation; and VTC Insurance Group, a Michigan business entity,

DEFENDANTS.

COMPLAINT

COME NOW Plaintiffs, by and through undersigned counsel and for their Complaint against
the Defendants, and each of them, do hereby allege as follows:

THE PARTIES

1. The Plaintiffs are all residents or property owners near the blast site described herein and
thus, allege that they have a derivative relationship with one another as local residents, neighbors,
and property owners seeking declaratory and injunctive relief against the City of Weirton as set
forth in Count One below titled "*COUNT ONE – DECLARATORY AND INJUNCTIVE RELIEF
AGAINST THE CITY OF WEIRTON REGARDING ITS ISSUANCE OF DEMOLITION PERMITS
AND FOR OTHER RELIEF AS SPECIFIED.*" Nearly all Plaintiffs were City of Weirton residents
and property owners in the area of the demolition, and some rented or boarded in the area of the
demolition. All Plaintiffs suffered injuries to their person and/or property as a proximate result of
the actions of the Defendants.

A. Plaintiffs, Non-responsive based on revised scope
Non-responsive based on revised scope and Non-responsive based on it
Non-responsive based on it are a married couple residing at
Non-responsive based on revised scope
Non-responsive based on revised scope, Weirton, West Virginia and own real estate located at Non-responsive based on revised scope
Non-responsive based on revised scope Weir Avenue and Non-responsive based on revised scope
Non-responsive based on revised scope, near Weir Avenue, all of which properties are located in
Hancock County, West Virginia.

The other Plaintiffs include:

B. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia, and is a beneficial resident of that residence. [Non-responsive based on revised scope] was near the center of the worst of the blast effect. Plaintiff, [Non-responsive based on revised scope], is a sometime resident at this same address and suffers from respiratory disorders aggravated by Defendants' actions.

C. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], are both residents of [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia and own [Non-responsive based on revised scope] near Weir Avenue, Weirton, Hancock County, West Virginia. Plaintiff [Non-responsive based on revised scope], a minor, resides at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia and brings her claim pursuant to W. Va. R. C. P. Rule 17(c) by her next friend and mother, [Non-responsive based on revised scope].

D. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], are a married couple residing at [Non-responsive based on revised scope] near Weir Avenue, Weirton, Hancock County, West Virginia and also bring suit pursuant to W. Va. R. C. P. Rule 17(c), as next friends of Plaintiff, [Non-responsive based on revised scope], a minor.

E. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], are a married couple residing at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.

F. Plaintiff, [Non-responsive based on revised scope], is a resident of [Non-responsive based on revised scope] near Weir Avenue, Weirton, Hancock County, West Virginia.

G. Plaintiff, [Non-responsive based on revised scope], is a resident of [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia.

H. Plaintiff, [Non-responsive based on revised scope], owns properties at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.

I. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.

J. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.

K. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.

L. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.

M. Plaintiff, [Non-responsive based on revised scope], is a resident of [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.

N. Plaintiff, [Non-responsive based on revised scope], is a resident of [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.

O. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia.

P. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope] and owns [Non-responsive based on revised scope] and [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia.

Q. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], are a married couple residing at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia. They are buying the house under land contract from [Non-responsive based on revised scope]. Due to [Non-responsive based on revised scope] health condition, he was homebound at the time of the demolition.

R. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia.

S. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], are a married couple residing at [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia.

T. Plaintiff, [Non-responsive based on revised scope], is a resident of [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia.

U. Plaintiff, [Non-responsive based on revised scope], is a resident of [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.

- V. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope], and owns [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.
- W. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia. [Non-responsive based on revised scope] is the sister of Plaintiff [Non-responsive based on revised scope] and has a legal property interest in [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia, where [Non-responsive based on revised scope] resides.
- X. Plaintiffs, [Non-responsive based on revised scope], and [Non-responsive based on revised scope], reside at [Non-responsive based on revised scope] near Weir Avenue, Weirton, Hancock County, West Virginia.
- Y. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], are a married couple residing at [Non-responsive based on revised scope] Weirton, Hancock County, West Virginia.
- Z. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], are a married couple residing at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.
- AA. Plaintiff, [Non-responsive based on revised scope] resides at [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia. [Non-responsive based on revised scope] suffers from a chronic lung disease and respiratory disorder that was exacerbated due to the noxious cloud caused by the demolition blasting described herein.
- BB. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], are a married couple residing at [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia.
- CC. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia.
- DD. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], are a married couple residing at [Non-responsive based on revised scope], Weirton, West Virginia and own [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia.
- EE. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia. Plaintiff, [Non-responsive based on revised scope], is a minor who resides at [Non-responsive based on revised scope], Weirton,

Hancock County, West Virginia and brings his claim pursuant to W. Va. R. C. P. Rule 17(c) by his next friend, [Non-responsive based on revised scope].

FF. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], reside together at [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia.

GG. Plaintiff, [Non-responsive based on revised scope], is resident of [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.

HH. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], are a married couple residing at [Non-responsive based on revised scope] and also own [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.

II. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope] and owns [Non-responsive based on revised scope] Weirton, Hancock County, West Virginia.

JJ. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], reside at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.

KK. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], are a married couple residing at [Non-responsive based on revised scope] near Weir Avenue, Weirton, Hancock County, West Virginia.

LL. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia.

MM. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], reside at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia. Plaintiffs [Non-responsive based on revised scope] and [Non-responsive based on revised scope] all three minors, reside at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia and bring their claim pursuant to W. Va. R. C. P. Rule 17(c) by their next friend, [Non-responsive based on revised scope].

NN. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], are a married couple residing at [Non-responsive based on revised scope] and own [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia.

OO. Plaintiff, [Non-responsive based on revised scope], is an adult residing at [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia. She brings this complaint on her own

behalf and on behalf of her minor children, namely, [Non-responsive based on revised scope], and [Non-responsive based on revised scope], all residing at [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia, as their guardian and next friend.

PP. Plaintiff, [Non-responsive based on revised scope], resides at [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia

QQ. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope], reside at [Non-responsive based on revised scope], near Weir Avenue, Weirton, Hancock County, West Virginia. Plaintiffs, [Non-responsive based on revised scope] and [Non-responsive based on revised scope] all three minors, also reside at [Non-responsive based on revised scope], Weirton, Hancock County, West Virginia and bring their claim pursuant to W. Va. R. C. P. Rule 17(c) by their next friend, [Non-responsive based on revised scope]. Further, Plaintiff [Non-responsive based on revised scope], a minor, also resides at [Non-responsive based on revised scope] Weirton, Hancock County, West Virginia and brings his claim pursuant to W. Va. R. C. P. Rule 17(c) by his next friend, [Non-responsive based on revised scope].

2. Defendant Frontier Industrial Corporation ("Frontier") is a foreign corporation with its principal place of business at 500 Seneca Street, Suite 504, Buffalo, New York, 14204.

3. Frontier Group's COO, Robert W. Zuchlewski, is sued here as an individual for his own tortious conduct and the tortious conduct he knowingly authorized. Defendant Zuchlewski's business card, which he gave to one or more Plaintiffs, lists his address as 500 Seneca Street, Suite 504, Buffalo, New York 14204.

4. Defendant City of Weirton ("the City") is a West Virginia political subdivision and is a municipal corporation created pursuant to the laws of the State of West Virginia.

5. The City required a Certificate of Liability Insurance, attached hereto as Exhibit A, to be issued by Defendant VTC Insurance Group, whose headquarters address is 1175 West Long Lake Road, Suite 200, Troy, MI 48098. The liability insurance binder indicates and confirms a liability insurance policy for the demolition and blasting activities and damages set forth herein with a general aggregate limit of \$2 million and an umbrella limit of \$5 million per occurrence. The

insured was Defendant SCM Engineer Demolition, Inc. and the City was the "certificate holder." It is alleged that this insurance was for the equitable benefit of the Plaintiffs herein and covered "all operations" of the demolition described herein.

6. Defendant Panhandle Cleaning and Restoration, Inc. is a West Virginia corporation with its principal place of business at 42-38th Street, Wheeling, West Virginia 2603.

7. Defendant Mingo Junction Steel Works, LLC is a foreign corporation with its principal place of business at 500 Seneca Street, Suite 504, Buffalo, New York 14204.

8. Defendant SCM Engineer Demolition & Explosives, Inc. is a foreign corporation with its principal address at P.O. Box 44, St. Clair, Michigan 48098. It is believed the demolition permit was issued for this Defendant by the City of Weirton in the name of "SCM Engineer Demolition, Inc."

9. Defendant Rocky Rift Consulting, Inc. is a Pennsylvania corporation with its principal place of business at 966 Calkins Road, Milanville, Pennsylvania.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the claims asserted in this Complaint as the events giving rise to the Plaintiffs' claims occurred within the State of West Virginia. Venue is proper in this county pursuant to W. Va. Code § 56-1-1 as the demolition and explosion that gave rise to this lawsuit occurred in Hancock County, West Virginia. Further, the City of Weirton's city building, or situs, is located in Hancock County, West Virginia. Thus, venue is proper in Hancock County per W. Va. Code § 29-12A-13(a) which provides "[a]ctions against all political subdivisions within the scope of this article shall be brought in the county in which the situs of the political subdivision is located or in the county in which the cause of action arose."

**STATEMENT OF THE FACTS AND THE NOXIOUS
AND HAZARDOUS PARTICULATE CLOUD CAUSED BY THE DEMOLITION**

11. Defendants Frontier and Mingo Junction Steel Works, LLC own property located at 1224 Main Street in Weirton, Hancock County, West Virginia. On that site, a now-abandoned steel mill and continuous caster was previously located. The mill was also known as the Weirton Steel Basic Oxygen Plant ("BOP") or "Jolly Green Giant," a massive continuous caster building constructed in the late 1960s.

12. The site was in operation for decades from the 1960s forward and, on belief, contained dangerous metals and likely carcinogens, including chromes as well as lead and arsenics from years of steelmaking and massive quantities of what are known in the industry as "tramp elements" associated with steel making that had leached into the dirt at the site. The demolition explosion and implosion of tons of structural steel caused these dangerous metals and likely carcinogens to be become airborne and cover the Weir Avenue area and surrounding neighborhoods.

13. Defendant Frontier submitted an application with the City of Weirton for a blasting demolition permit on or about February 2, 2017.

14. According to the application for the blasting demolition permit, Defendant Frontier hired Defendant SCM Engineer Demolition & Explosives, Inc. as the "blasting subcontractor." In a YouTube video of the demolition described herein, Defendant SCM Engineer Demolition & Explosives, Inc. actually bragged about the demolition job they had done using the moniker of "Light 'Er Up" – the same job which caused the noxious cloud to settle on the Plaintiffs, their persons and property.

15. The "owner" of the demolition site in the application for the demolition permit was alleged to be Defendant Mingo Junction Steel Works, LLC.

16. A. Defendant Frontier had performed a prior blasting demolition on a smaller scale in the area of the BOP scrap preparation building on or about October of 2018. That blasting

demolition resulted in a large particulate cloud being blown or directed by the fallout towards nearby Weir Avenue homes. Thus, Defendant Frontier knew of the serious risks to local residents, including these Plaintiffs, associated with the proposed second, March 9, 2019 demolition and implosion.

B. Following the demolition of March 9, 2019, a chemist collected samples of the particulates spread by the demolition blast and had the same tested at a certified analytical laboratory. Under West Virginia law, exposure to toxic substance is "significant," as required to support medical monitoring claim, if plaintiff has been exposed to larger quantity of toxic substance or has been exposed for longer duration than general population. It is alleged that plaintiffs meet these requirements and were significantly exposed to toxic substances as a result of defendant's actions as set forth herein.

C. Among other things, the sample test results indicated that the particulate cloud sent by the Defendants' blast demolition onto the persons and property of the Plaintiffs, thus harmfully exposing them, to the following, as well as other dangerous elements and heavy metals:

i. **Hexavalent Chromium (Cr6)** has been found on Weir Avenue following the demolition. Hexavalent Chromium is a known carcinogen. It is alleged that the blast made this carcinogen airborne from the blast site to Weir Avenue, causing the Plaintiffs to be exposed.

ii. **Arsenic:** It is alleged that all forms of arsenic are a serious risk to human health. Arsenic is classified as a Group-A carcinogen.

iii. **Cadmium:** It is alleged that cadmium as a known human carcinogen.

iv. **Lead:** It is alleged that lead is a heavy metal. Lead exposure in young children has been linked to learning disabilities, developmental disabilities, decreases in intelligence, nonverbal reasoning, short-term memory, attention, reading and arithmetic ability, fine motor skills, emotional regulation, and social engagement. The effect of lead on children's cognitive abilities takes place at very low levels.

v. Mercury: It is alleged that mercury is a toxic pollutant that needs to be controlled to the greatest possible extent. Mercury and most of its compounds are extremely toxic.

vi. As well, other dangerous heavy metals and toxic pollutants were made airborne by the blast and settled in and around Weir Avenue.

17. A. The City of Weirton also knew or should have known that based upon the earlier demolition a debris cloud would certainly form if it allowed Defendant Frontier and the other Defendants to demolish the BOP Plant by the use of explosives on March 9, 2019. The City required a Certificate of Liability Insurance to be issued by VTC Insurance Group with a general aggregate limit \$2 million and an umbrella limit of \$5 million per occurrence. *See Exhibit A.* The insured was the Defendant SCM Engineer Demolition, Inc. and the City was the "certificate holder." It is alleged that this insurance was for the equitable benefit of the City's residents, including Plaintiffs herein, and covered "all operations" of the demolition described herein.

B. The City also knew or should have known that such a demolition would cause extraordinary vibrations and damage to the buildings in the surrounding neighborhood, including Plaintiffs' homes and rental properties. The City also knew or should have known, as ultimately depicted in the attached photograph Exhibits B through E, that a noxious, dangerous, filthy, carcinogenic, and heavy metal particulate cloud would come on to the property and persons of plaintiffs. The visual photographic exhibits attached to this Complaint are incorporated hereby as if described herein in detail.

**THE CITY OF WEIRTON'S DUTIES TO PROTECT ITS RESIDENTS DURING
DEMOLITION BY USE OF EXPLOSIVES AND THE LIABILITY INSURANCE POLICY
OF \$2 MILLION/\$5 MILLION WITH VTC INSURANCE GROUP**

18. A. The City of Weirton had a duty to protect all area residents and all citizens from the effects and dangers of such blasting demolition by the other Defendants.

B. The City had a duty to draft, promulgate and enforce thorough rules, regulations and ordinances regarding the issuance of blasting demolition permits by use of explosives in the city limits, and failed to do so.

C. The City had a duty to refuse to issue a blasting demolition permit unless all proper precautions, including wind and weather, were appropriate and pre-demolition debris removal was undertaken that minimized the likelihood of carcinogenic debris being blown skyward onto adjacent properties and persons.

D. The City had a duty to inform the local, affected public and seek their input at public meetings when allowing such ultra-hazardous activity near a city residential neighborhood and failed to do so.

E. The City had a duty to properly train its employees and staff with regard to the care that must be taken when issuing blasting demolition permits to be done by blasting and failed to do so.

F. The City had a duty to respond and offer aid to the local residents, including the Plaintiffs here, and test the particulate matter at the blasting demolition site both pre and post-blast and to test the particulate matter that had been blown off the blasting demolition site onto adjacent lands, and failed to do so.

G. The City had a duty to prevent the other Defendants and their agents from washing off the particulates into the City's storm system and ultimately into the Ohio River watershed and failed to do so.

H. As stated below, the City had a duty to comply with all state and federal regulations meant to safeguard persons and property when considering an application for a demolition by blasting permit, and failed to do so.

STATE OF WEST VIRGINIA REGULATIONS REGARDING EXPLOSIONS and BLAST DEMOLITIONS

19. The City of Weirton, as a political subdivision of the State of West Virginia, is required to follow and comply with the West Virginia State Fire Code, and failed to do so.

20. Title 87 of the Legislative Rules of the State Fire Code establishes regulations for the safeguarding of life and property from the hazards of fire and explosion in this state and are legislative rules issued under authority of W. Va. Code § 29-3-5, with an effective date of July 1, 2016.

21. Title 87.1. 2.2. Q.6.A, requires that blasting operations be conducted in a manner that prevents injury to persons and damage to public or private property outside the permit or blast area for which blasting activity occurs. For purposes of this rule, the definition of blast area is the area in which concussion (shock wave), flying material, or gases from an explosion can cause injury to persons (NFPA 495).

22. Title 87.1.2.2.u.2.I requires that actions taken by the user of explosives be recorded to verify measures taken to control fly rock, including whether or not mats were used.

23. Title 82.1. 2.2. U.2.J requires the user of explosives to record weather conditions including temperature, wind direction and estimated speed (and) cloud cover.

THE WEIR AVENUE NEIGHBORHOOD AND COMMUNITY

24. The Weir Avenue neighborhood located in Hancock County, West Virginia, is one with a proud heritage and history, and the City of Weirton even placed a sign at the end of the street noting the large number of professional athletes who grew up in and around Weir Avenue. However, the

neighborhood was considered by the Defendants not worthy of safeguarding and protecting in violation of the laws of the State of West Virginia.

25. As noted on WVpress.org, when a new sign honoring all of the City's former professional athletes was erected in Weirton at the intersection of Weir Avenue and Cove Road by the local Chamber of Commerce, the president of the Chamber noted that *"The location was chosen because Weir Avenue is said to be the street with the largest number of professional athletes in the country."* That same pride and respect was, however, not afforded to residents in the Weir Avenue neighborhood, including the Plaintiffs herein, when the City allowed some of the other Defendants to conduct dangerous blasting operations where the likelihood of damage to those residents was certain or almost certain.

26. On Thursday prior to the blast, that is, March 7, 2019, Frontier Group COO and Defendant herein, [Non-responsive based on revised scope] and another man who was purportedly in charge of the demolition team believed to be [Non-responsive based on revised scope], met with some of the Plaintiffs on Weir Avenue. Both men were acting as agents, employees and servants of Defendants Frontier and Mingo Junction Steel Works, LLC.

27. Defendant [Non-responsive based on revised scope] and [Non-responsive based on revised scope] purposely misled these Plaintiffs with regard to the dangers of the blast, especially in swirling wind and dry conditions. [Non-responsive based on revised scope] and [Non-responsive based on revised scope] falsely and tortuously assured these Plaintiffs that their persons and property were safe and would not be harmed in any manner, in a fraudulent effort to quell any objection to the blasting by the local Weir Avenue area residents and the public at large before it took place.

28. In fact, on information and belief, Defendant [Non-responsive based on revised scope] and [Non-responsive based on revised scope] knew from their extensive demolition experience and the prior demolition described above of the dangers to these Plaintiffs and their property, and as employees and/or agents of Defendants Frontier and Mingo Junction Steel Works, LLC not only failed to warn these residents, but willfully and wantonly

misled the Plaintiffs. Such conduct is vicariously attributable to Defendants, Frontier and Mingo Junction Steel Works, LLC.

29. On belief, it is alleged that Defendants Frontier and Mingo Junction Steel Works, LLC, misled City officials, as well, about the dangers of airborne particulates when blasting in windy conditions. In fact, an official of the City of Weirton was quoted in a pre-blast statement to a local newspaper reassuring residents that they should go eat a "complimentary breakfast" paid for by Defendant Frontier at either Bob Evans or Eat'n Park restaurants in Weirton:

"Go eat breakfast with your family and when you come back everything will be done and everybody will be safe. That's the main thing. just to make sure that everybody is safe."

"They're gonna help fix anything that may be damaged, windows, they've got crews and teams that are going to be on standby ready to react so that nobody's put out for any length of time and any discomfort to their home."

30. Defendant Frontier hired Defendant Panhandle Cleaning and Restoration, Inc. ("Panhandle") to begin some type of "cleanup" of the residential homes affected and, on information and belief, to collect samples of the particulate matter on Frontier's behalf. Prior to completing the attempted cleanup, Panhandle withdrew from the Weir Avenue neighborhood disaster site on or about March 20, 2019, after alleging publicly that they were not being paid by Frontier. In documents that were subsequently provided to local residents, including some of the Plaintiffs herein, Frontier has sought to be "released" from liability for what it believes to be the negligent actions of Panhandle in the aborted cleanup attempt of the properties in the area of the demolition. This alone is strong circumstantial evidence of Panhandle's negligence

31. According to data from the National Weather Service in Pittsburgh, Pennsylvania, on the date of the blasting demolition, March 9, 2019, area winds were blowing with gusts up to 33 miles per hour. All of the Defendants knew or should have known that the windy conditions and lack of rain would cause an enormous cloud of particulate matter to envelope the entire area, including Plaintiffs' homes and persons. The attached Exhibits B through E demonstrate the particulate

cloud that was released at the time of this explosion by the Defendants, onto the homes, persons, and properties of the Plaintiffs. These attached photographs are hereby incorporated into the allegations of this Complaint.

32. According to the local newspaper, "[T]he blast shook windows throughout the [City of Weirton] creating a huge cloud of black smoke as debris toppled to the ground. Initial reports were that the demolition went off without a hitch, Frontier Group COO [redacted] said minutes after the explosion. *"Everything went according to plan, that's the first real official comment."* [redacted] said, adding crews would be fanning out into nearby neighborhoods to look for ancillary damage throughout the morning. *"But as far as the charges detonating, it was good."* It is alleged that this statement by [redacted] was untrue or, conversely, that he purposely allowed a blast demolition to take place where the plan was for the BOP to fall towards the Weir Avenue neighborhood and cover persons and property in a noxious cloud of harmful particulates.

33. A. [redacted] is named as a defendant in this lawsuit in Count Five below. His demolition that "went according to plan" apparently included covering the Plaintiffs, their homes, and property in noxious particulate dust, by allowing the demolition to occur in swirling wind conditions.

B. Frontier retained Defendant Rocky Rift Consulting, Inc. ("Rocky Rift"), a Pennsylvania corporation, with its principal place of business at 966 Calkins Road, Milanville, Pennsylvania. In a letter sent prior to the blasting by Rocky Rift dated March 6, 2019 to Weir Avenue residents, Rocky Rift falsely and with the intent to defraud the Plaintiffs, told them:

- i. "The blasting... (was) not capable of having an adverse effect on any structures."
- ii. The blasting operations would be conducted "with the least inconvenience to all concerned."
- iii. That Rocky Rift was hired "For the protection of all concerned."

iv. That "based on a blast design as researched by the United States Bureau of Mines relating distance to charge weight, we DO NOT anticipate any such problems will occur." (Emphasis in the original).

v. That the pre-blast inspection service was "useful in showing the condition of the structure," implying some benefit to the plaintiffs, when in fact, there was none.

C. Such false and fraudulent comments and actions of Rocky Rift and of [REDACTED] as set forth below, caused harm to the Plaintiffs.

34. The Defendants, particularly Frontier and [REDACTED] knew exactly what would happen to the surrounding homes and citizens when they blasted. Nonetheless, the Defendants recklessly and outrageously disregarded the lives, safety, and property interests of the Plaintiffs in order to save money in the demolition of the old "Jolly Green Giant." Using explosives was a less costly way for Frontier to demolish the building, rather than using the safer method of cranes, welders, riggers and cutting torches. Frontier willfully and wantonly put its corporate profits above the safety of the Plaintiffs.

35. In fact, City of Weirton officials also promoted the demolition to local residents in a false positive light both before and after the demolition. According to a pre-blast article in a local paper: *"It's bittersweet,"* [a local City of Weirton councilman] said. *"People don't understand, once you clean that out ... it's going to make way for progress. There are companies that are anxious, they need (the) acreage. Thing is, Weirton's so frozen in time because we've always had the mill here to support us,"* [he] said. *"It's creating the next way of life,"* [REDACTED] chimed in."

36. After the explosion, the same City of Weirton councilman had the following comments to a local television station: *"[A Weirton city] councilman...did speak to NEWS9 about property damage. He said that Frontier will work with residents to get their homes back to normal. 'They've videotaped all the foundations, inside and out, so they can see the post - what is, was before, and*

anything after, and there would be no argument. If you had damage, they're glad to repair it all,'
[the councilman] said." In fact, this did not turn out to be true.

37. The City of Weirton was a willing agent of the Defendants in allowing this blasting damage and airborne particulate cloud when its officials instead had a duty to protect and warn residents of the danger.

38. Defendants, Frontier Industrial Corporation, City of Weirton, Mingo Junction Steel Works, LLC, Rocky Rift, Non-responsive based on it and SCM Engineered Demolition & Explosives Inc., all acted in concert and tortuously conspired to perform this blast demolition in windy and dry conditions, when they knew or should have known of the likelihood that the blasting would cause damage to the neighborhoods, residents, and property owners in the vicinity of Weir Avenue, yet Defendants callously, intentionally, maliciously, deliberately and outrageously disregarded such risks.

39. Each of the Plaintiffs named herein has been harmed by the actions of the Defendants herein. Some were City of Weirton residents and property owners in the Weir Avenue area of the demolition; some rented or boarded in the area of Weir Avenue; all suffered injuries to their person and/or property as a proximate result of the actions of the Defendants. Unfortunately, the City of Weirton has been given limited immunity from money damages arising from its issuance of permits by the West Virginia state legislature and the remedy sought against it is declaratory in nature alone at this time.

COUNT ONE

DECLARATORY AND INJUNCTIVE RELIEF **AGAINST THE CITY OF WEIRTON AND VTC INSURANCE GROUP REGARDING ITS** **ISSUANCE OF DEMOLITION PERMITS AND FOR OTHER RELIEF AS SPECIFIED** (Defendants City of Weirton and VTC Insurance Group)

40. Plaintiffs incorporate by reference herein the allegations set forth in this Complaint as if set forth herein at length.

41. This is a claim for declaratory relief against the City of Weirton as authorized by W. Va. Code § 55-13-1 et seq. and for injunctive relief against the City of Weirton. In addition, this Court is asked to also determine that the immunities offered to political subdivisions are not applicable under the facts of this case and no protection from liability is afforded to the City of Weirton under W. Va. Code § 29-12A-5(a)(9), or elsewhere in the state code or common law, and to allow an amended pleading to be filed against the City of Weirton for money damages.

42. West Virginia Code § 55-13-2, in pertinent part, allows "Any person... whose rights, status or other legal relations are affected by a...municipal ordinance...may have determined any question of construction or validity arising under the...ordinance...and obtain a declaration of rights, status or other legal relations thereunder."

43. By ordinance and population, the City of Weirton only requires a simplistic and inadequate application to be submitted by persons or firms seeking to obtain a blasting demolition permit through the use of high explosives. The ordinance and application process does not factor in the prevailing wind speed, gusts or weather conditions at the time of the explosion which are a significant factor in allowing hazardous particulates to become airborne and leave the blast site and move on to adjoining properties and affect other residents and citizens. Further, it does not allow for the dangers of blasting in an area containing dangerous metals and particulates next to a residential neighborhood.

44. Plaintiffs claim and ask this Court to declare that the City of Weirton's ordinances and/or regulations under which the City issues permits for demolition done with the use of explosives is arbitrary, capricious, unlawful, unconstitutional, inadequate and preempted by state law.

45. Plaintiffs state that such declaratory and injunctive relief is necessary due to the likelihood of Defendant Frontier and the other Defendants once again using explosive devices in the city limits to demolish steelmaking facilities that contain carcinogens and heavy metals and which would emit a particulate cloud on their property and other city residences and buildings.

46. Plaintiffs claim and ask this Court to declare, that by failing to have an adequate permitting and application process and by collaborating with and enabling and allowing firms, such as Defendants Frontier Industrial Corporation, Mingo Junction Steel Works, LLC and SCM Engineer Demolition, Inc., to detonate high explosives near residential areas in windy and dry conditions, the City of Weirton:

- A. Engaged in an unconstitutional taking of the Plaintiff's property and injury to their person;
- B. Violated state law by failing, in its demolition permit process, to require that blasting operations be conducted in a manner that prevents injury to persons and damage to public or private property outside the permit or blast area for which blasting activity occurs;
- C. Unlawfully abdicated its demolition permit regulatory authority to third parties;
- D. Should be ordered to draft comprehensive ordinances and regulations that safeguard local residents and property before issuing any additional demolition permits through the use of explosive materials at hazardous industrial sites near residential neighborhoods;
- E. The City required a Certificate of Liability Insurance to be issued by Defendant, VTC Insurance Group, with a general aggregate limit \$2 million and an umbrella limit of \$5 million per occurrence. The insured was the Defendant SCM Engineer Demolition, Inc. and the city was the "certificate holder." It is alleged that this insurance was for the equitable benefit of the Plaintiffs herein and covered "all operations" of the demolition described herein, and the Court is asked to so declare that this insurance coverage is for the benefit of Plaintiffs.
- F. The Court is asked to declare that the City is not immune from civil damages under W.Va. Code §29-12A-1, et seq. also known as "The Governmental Tort Claims and Insurance Reform Act," particularly W.Va. Code §29-12A-5(a) (9) at least up to the extent of this VTC Insurance Group coverage, and to permit the filing of an amended complaint seeking money damages against the City.

47. Pursuant to Rule 65 of the West Virginia Rules of Civil Procedure and W. Va. Code § 53-5-8, Plaintiffs herein reserve the right to move for injunctive relief following a decision of this Court with regard to the declaratory relief prayed for herein and to show the equity of plaintiffs by affidavit or testimony at a hearing thereon or otherwise.

WHEREFORE, Plaintiffs pray for damages as set forth below.

COUNT TWO

**STRICT LIABILITY FOR INTRINSICALLY DANGEROUS
AND EXTRAORDINARILY HAZARDOUS ACTIVITY**

(Defendants Frontier Industrial Corporation, Mingo Junction Steel Works, LLC, Rocky Rift Consulting, Inc., and SCM Engineered Demolition & Explosives Inc.)

48. Plaintiffs incorporate by reference herein the allegations set forth in this Complaint as if set forth herein at length.

49. A. Defendants Frontier Industrial Corporation, Mingo Junction Steel Works, LLC, Rocky Rift Consulting, Inc., and SCM Engineered Demolition & Explosives, Inc., jointly and severally, and together in concert, engaged in a fraudulent and duplicitous course of conduct and conspired to use explosives to demolish the BOP plant in Weirton on the date in question when they knew or should have known that the blasting operations would cause great harm to the Plaintiffs.

B. On belief, it is alleged that Frontier and Mingo Junction Steel Works, LLC hired and engaged Rocky Rift Consulting, Inc. and SCM Engineered Demolition & Explosives, Inc. ("SCM") as their agents and subcontractors for the pre- and post- demolition work; and thus, Frontier and Mingo Junction Steel Works, LLC are liable for their actions under the doctrines of agent-principal, master-servant and other theories of vicarious liability.

50. The use of explosives in this instance was an intrinsically dangerous and extraordinarily hazardous activity, especially when done so near a residential neighborhood in Weirton, Hancock County, West Virginia, and all these defendants are liable for the injuries caused.

51. The following is alleged:

A. The West Virginia Supreme Court held in *Crum v. Equity Inns, Inc.*, 224 W. Va. 246, 257-58, 685 S.E.2d 219, 230-31 (W. Va. 2009):

"In applying the doctrine of strict liability in prior cases, we have, for instance, ruled that the use of explosives in blasting operations, though necessary and lawfully used, being intrinsically dangerous and extraordinarily hazardous, renders the contractor liable for damages resulting to the property of another from such blasting, without negligence on the part of the contractor, whether the damage was caused by vibrations or by casting rocks or other debris on the complaining party's property. [Citing] *Whitney v. Ralph Myers Contracting Corp.*, 146 W.Va. 130, 118 S.E.2d 622 (1961); *Moore, Kelly & Reddish, Inc. v. Shannondale, Inc.*, 152 W.Va. 549, 165 S.E.2d 113 (1968); *Perdue v. S.J. Groves & Sons Co.*, 152 W.Va. 222, 161 S.E.2d 250."

B. West Virginia is among the majority of jurisdictions that have adopted the strict liability doctrine in blasting cases. See *Peneschi v. Nat'l Steel Corp.*, 170 W. Va. 511, 519, 295 S.E.2d 1, 9 (W. Va. 1982).

C. West Virginia recognizes "[t]he rule of *Rylands*" which states "that the defendant will be liable when he damages another by a thing or activity unduly dangerous and inappropriate to the place where it is maintained, in light of the character of that place and its surroundings." *Id.* citing W. Prosser, *Law of Torts*, 508 (4th ed. 1971).

52. All of the Plaintiffs suffered damages as a result of the blasting demolition by Defendants Frontier Industrial Corporation, Mingo Junction Steel Works, LLC, Rocky Rift Consulting, Inc., and SCM Engineered Demolition & Explosives, Inc.

WHEREFORE, Plaintiffs pray for damages as set forth below.

COUNT THREE

TORT OF OUTRAGE

(Defendants Frontier Industrial Corporation, Mingo Junction Steel Works, LLC, Rocky Rift Consulting, Inc., Panhandle Cleaning and Restoration, Inc. and SCM Engineered Demolition & Explosives Inc.)

53. Plaintiffs incorporate by reference herein the allegations set forth in this Complaint as if set forth herein at length.

54. The aforesaid actions of the Defendants Frontier Industrial Corporation, Mingo Junction Steel Works, LLC, Rocky Rift Consulting, Inc., Panhandle Cleaning and Restoration, Inc., and SCM Engineered Demolition & Explosives, Inc., in choosing to use high explosives to demolish the BOP plant in Weirton near the Weir Avenue neighborhood on the date in question were outrageous, given the wind and weather conditions, and were done with willful, wanton and reckless indifference to the likelihood that the Plaintiffs would be injured.

55. Plaintiffs allege:

A. That these Defendants' conduct as set forth herein was atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency by knowingly covering their persons, including their children, the interior of their homes and property in a layer of a noxious cloud of particulates.

B. That each of these Defendants acted with the intent to inflict emotional distress, or acted recklessly when it was certain or substantially certain emotional distress would result from its conduct based upon the prior blast cloud and the windy and dry conditions on the day of the blast.

C. That the actions of the Defendants caused the Plaintiffs to suffer emotional distress.

D. That the emotional distress suffered by the Plaintiffs was so severe that no reasonable person could be expected to endure the same. These plaintiffs suffered and continue to suffer sleepless nights and concerns about the toxic effects of the heavy metals on their health and that of their children.

E. That the Plaintiffs suffered harm as a result of such outrageous conduct by Defendants named in this count, including their failure to remediate and repair all damages.

F. That Plaintiffs suffered serious emotional distress arising from the fear of contracting a disease that is reasonably foreseeable. The evidence will show first, that the exposure upon which the claim is based raises a medically established possibility of contracting a disease, and second,

that the disease will produce death or substantial disability requiring prolonged treatment to mitigate and manage or promising imminent death.

WHEREFORE, Plaintiffs pray for damages as set forth below.

COUNT FOUR

TRESPASS

(Defendants Frontier Industrial Corporation, Mingo Junction Steel Works, LLC, and SCM Engineered Demolition & Explosives Inc.)

56. Plaintiffs incorporate by reference herein the allegations set forth in this Complaint as if set forth herein at length.

57. The law recognizes that owners of property have an inherent right to the "exclusive" use of their property. A Defendant is liable for trespass if it enters the Plaintiff's property without the Plaintiff's consent and interferes with the landowner's exclusive right to use the land.

58. A "trespass" occurred here when Defendants Frontier Industrial Corporation, Mingo Junction Steel Works, LLC and SCM Engineered Demolition & Explosives, Inc. demolished the BOP Plant using explosives and made the noxious particulate cloud airborne. In this jurisdiction, a trespass occurs when (1) a person intentionally enters another's land, without permission, including causing a particulate cloud of dangerous metals to settle on another's property; (2) a person remains on another's land without the continued permission to be there, even if he entered rightfully; or (3) a person puts an object on (or refuses to remove an object from) another's land without permission.

59. By causing and allowing the extraordinary particulate cloud following the blast to leave the blast area and cover the persons and residences on their own property, Defendants Frontier Industrial Corporation, Mingo Junction Steel Works, LLC and SCM Engineer Demolition, Inc. committed a trespass on Plaintiffs' persons and property and caused them harm.

WHEREFORE, Plaintiffs pray for damages as set forth below.

COUNT FIVE

NEGLIGENCE; TOXIC TORT/MEDICAL MONITORING

(Defendants Frontier Industrial Corporation, Mingo Junction Steel Works, LLC, Rocky Rift Consulting, Inc., Panhandle Cleaning and Restoration, Inc., and SCM Engineered Demolition & Explosives Inc.)

60. Plaintiffs incorporate by reference herein the allegations set forth in this Complaint as if set forth herein at length.

61. A. It is alleged that the Defendants, Frontier Industrial Corporation, Mingo Junction Steel Works, LLC, Rocky Rift Consulting, Inc., Panhandle Cleaning and Restoration, Inc., and SCM Engineered Demolition & Explosives, Inc., were negligent when they prepared for the demolition, when they demolished the BOP Plant using explosives on or about March 9, 2019, and when these defendants, jointly and severally, sought to repair and/or remediate the damages, and proximately caused the Plaintiffs, and each of them, harm.

B. The Defendants exposed Plaintiffs to toxic elements such as those stated above in Paragraph 16. It is further alleged that (1) the substances were dangerous, (2) the Plaintiffs were exposed to the substances, (3) the substances caused harm to the Plaintiffs and/or are likely to cause harm to the Plaintiffs so as to require the Defendants to pay for long-term medical monitoring of the Plaintiffs.

C. It is further alleged that in this case an injury-in-fact may simply be the fear or anxiety of future harm due to the exposure to toxic or harmful substances. It is alleged that plaintiffs suffer from such fears and anxieties. The risk of future harm to plaintiffs may also entail economic costs, such as medical monitoring and preventative steps going forward.

D. Plaintiffs allege that they can prevail on a medical monitoring claim under West Virginia law, inasmuch as they can prove that: (1) they have, relative to general population, been significantly exposed; (2) to proven hazardous substance; (3) through tortious conduct of defendant; (4) as proximate result of exposure, plaintiffs have suffered increased risk of contracting serious

latent disease; and (5) the increased risk of disease makes it reasonably necessary for plaintiffs to undergo periodic diagnostic medical examinations different from what would be prescribed in absence of exposure; and (6) monitoring procedures exist that make early detection of disease possible.

WHEREFORE, Plaintiffs pray for damages as set forth below.

COUNT SIX

TORTIOUS CONDUCT BY [Non-responsive based on revised scope] (Defendant [Non-responsive based on revised scope]) [Non-responsive based on revised scope]

62. Plaintiffs incorporate by reference herein the allegations set forth in this Complaint as if set forth herein at length.

63. Prior to the demolition, Frontier Group COO [Non-responsive based on revised scope] and a man who was purportedly in charge of the demolition team but under the control and direction of [Non-responsive based on revised scope] namely [Non-responsive based on revised scope] came to Weirton, Hancock County, West Virginia and met with some of the Plaintiffs at their homes on Weir Avenue in the days before the demolition blast, that is, on or about March 7, 2019.

64. Defendant [Non-responsive based on revised scope] purposely misled these Plaintiffs with regard to the dangers of the blast, especially in windy and dry conditions. [Non-responsive based on revised scope] repeatedly assured these Plaintiffs that the Plaintiffs' persons and property were safe and would not be harmed in any manner by the explosive demolition, in a fraudulent effort to quell any objection to the blasting by the local residents and the public at large before it took place.

65. On information and belief, Defendant [Non-responsive based on revised scope] knew from his prior experience of the dangers to Plaintiffs and their property, and as an individual and/or as an officer, employee and/or agent of Defendant Frontier, [Non-responsive based on revised scope] not only failed to warn these residents, but willfully and wantonly misled them. As well, [Non-responsive based on revised scope] subsequently promised to see to the cleanup and repair for any damage caused by the blasting and failed to do so. Defendant Frontier failed to authorize

payment and further work by Defendant Panhandle Restoration after March 20, 2019, and some damaged residents were ignored altogether. Such actions by [REDACTED] caused Plaintiffs harm.

66. A. An officer of a corporation may be personally liable for the tortious acts of the corporation, including fraud, if the officer participated in, approved of, sanctioned, or ratified such acts. *See Bowling v. Ansted Chrysler-Plymouth-Dodge, Inc.*, 188 W. Va. 468, 469, 425 S.E.2d 144, 145 (1992).

B. When a corporate officer commits intentional torts in his corporate capacity he is not shielded from personal liability for those torts as a result of his personal participation in the alleged wrongdoing. *See Planet Techs., Inc. v. Planit Tech. Grp., LLC*, 735 F. Supp. 2d 397, 404 (D. Md. 2010).

WHEREFORE, Plaintiffs pray for damages as set forth below.

COUNT SEVEN

TORT OF OUTRAGE BY [REDACTED] (Defendant [REDACTED])

67. Plaintiffs incorporate by reference herein the allegations set forth in this Complaint as if set forth herein at length.

68. The actions of Defendant [REDACTED] set forth above constituted intentional, reckless indifferent and outrageous tortious conduct by [REDACTED] including:

A. Defendant [REDACTED] conduct was atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency by knowingly covering Plaintiffs' persons and property in a noxious cloud of blast particulates. It is alleged that the Defendant acted with total indifference to Plaintiffs by first assuring the Plaintiffs that no harm would come to them, but then allowing the blast demolition to occur in swirling wind conditions. It is alleged that [REDACTED] acted recklessly in allowing the blast to take place and go forward, even though it was certain or substantially certain that injury to persons and property and emotional distress would result from his

conduct based upon the size of the demolition, the angle and manner in which the BOP was demolished and sure to fall, and the swirling winds and dry conditions on the day of the March 9, 2019 blast.

B. The aforesaid actions of [REDACTED] caused the Plaintiffs to suffer physical injuries, emotional distress, and property loss.

C. The emotional distress suffered by the Plaintiffs as a result of their persons and property being covered with the noxious particulate cloud that was produced and inhaled by Plaintiffs was so severe that no reasonable person could be expected to endure it.

D. The Plaintiffs suffered harm as a result of such outrageous conduct by the Defendant.

WHEREFORE, Plaintiffs pray for damages as set forth below.

COUNT EIGHT

FRAUDULENT INDUCEMENT BY

[REDACTED] **AND ROCKY RIFT CONSULTING, INC.**
(Defendants Robert W. [REDACTED] and Rocky Rift Consulting, Inc.)

69. Plaintiffs incorporate by reference herein the allegations set forth in this Complaint as if set forth herein at length.

70. The aforesaid actions by Defendants [REDACTED] and Rocky Rift Consulting, Inc. constituted the tort of fraudulent inducement. By repeatedly assuring the Plaintiffs prior to the demolition that their persons and property were safe, [REDACTED] and Rocky Rift induced Plaintiffs not to vocally oppose and protest the planned demolition, and Plaintiffs relied on [REDACTED] and Rocky Rift's false statements to their damage and detriment.

71. In fact, the statements made Rocky Rift Consulting, Inc. in writing to Plaintiffs as set forth above in paragraph 33 and those made by [REDACTED] in person to the Plaintiffs and in the local media, were material and false, and Plaintiffs relied upon such assurances and were justified under the circumstances in doing so. Plaintiffs were subsequently harmed as a direct and proximate result

of relying upon the assurances of Rocky Rift and Non-responsive based on the
Non-responsive based on the
Non-responsive based on the
Non-responsive based on the See Syl. Pt. 1, *Lengyel v. Lint*, 167 W.Va. 272, 280 S.E.2d 66 (1981). Further, it is alleged that in this state "[i]t is not necessary that the fraudulent representations complained of (are) the sole consideration or inducement moving the plaintiff. If the representations contributed to the formation of the conclusion in the plaintiff's mind, that is enough..." Syl. Pt. 3, in part, *Horton v. Tyree*, 104 W.Va. 238, 139 S.E. 737 (1927).

WHEREFORE, Plaintiffs pray for damages as set forth below.

COUNT NINE

NEGLIGENCE AND BREACH OF DUTY OWED TO PLAINTIFFS BY PANHANDLE CLEANING AND RESTORATION, INC. (Defendant Panhandle Cleaning and Restoration, Inc.)

72. Plaintiffs incorporate by reference herein the allegations set forth in this Complaint as if set forth herein at length.

73. Following the demolition, Defendant Frontier hired Defendant Panhandle Cleaning and Restoration, Inc. ("Panhandle Cleaning") to begin the total cleanup of the residential homes affected by the Defendants blasting operations and, on information and belief, to collect samples of the particulate matter on Frontier's behalf. Prior to completing the attempted "cleanup," Panhandle Cleaning withdrew from the Weir Avenue neighborhood disaster site on or about March 20, 2019, after alleging publicly that they were not being paid by Frontier.

74. In a press release the next day on March 21, 2019, Defendant Frontier called Panhandle Cleaning's withdrawal from the cleanup site "deplorable." Further, Frontier was quoted in the press release statement as follows: "For Panhandle Cleaning & Restoration to portray themselves as a victim in this situation is deplorable...The people who need and deserve attention and help are the residents that they failed to serve properly." (emphasis added).

75. It is alleged that Panhandle Cleaning performed inadequate and negligent cleaning of Plaintiffs' homes. Defendant Frontier has also maintained that Defendant Panhandle Cleaning

negligently performed its cleanup efforts and caused Plaintiffs harm, and that allegation of negligence and harm is adopted here in this Complaint by Plaintiffs, as though set forth in *haec verba*. In releases drafted by Frontier and provided to some of the Plaintiffs by them, Frontier asked Plaintiffs to:

A. Release Defendants Mingo Junction Steel Works, LLC and Frontier Industrial Corp., and their successors, agents and assigns from "[a]ny property damage caused by Panhandle Cleaning and Restoration in the days following the March 9, 2019 drop event", thus, implying Panhandle Cleaning in fact caused Plaintiffs damages and injuries.

B. Release Defendants Mingo Junction Steel Works, LLC and Frontier Industrial Corp., and their successors, agents and assigns from "[t]he completion of cleaning services that were inadequately performed by Panhandle Cleaning and Restoration" thus, implying Panhandle Cleaning in fact caused Plaintiffs damages and injuries.

76. Plaintiffs herein were third-party beneficiaries of the contract between Defendants Frontier and Panhandle Cleaning and have a right to enforce the contractual obligations and rights and to be awarded damages for the negligent services provided by Panhandle Cleaning.

77. Plaintiffs were third-party intended beneficiaries of the contract between Defendants Frontier and Panhandle Cleaning, and when Panhandle Cleaning precipitously withdrew from the disaster area job site, Plaintiffs were damaged by Panhandle Cleaning's actions.

78. Defendant Panhandle Cleaning negligently performed cleanup services at Plaintiffs' homes, residences, and buildings and caused Plaintiffs harm.

WHEREFORE, Plaintiffs pray for damages as set forth below.

PRAYER FOR DAMAGES

Plaintiffs and each of them pray for the following damages:

1. Declaratory and injunctive relief against the City of Weirton and VTC Insurance Group as set forth above.

2. Compensatory damages against the Defendants, Frontier Industrial Corporation,

Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope

Mingo Junction Steel Works, LLC, Rocky Rift Consulting, Inc., Panhandle Cleaning and Restoration, Inc., and SCM Engineered Demolition & Explosives Inc., jointly and severally, in a sum sufficient to compensate Plaintiffs.

3. Punitive damages in a sufficient sum against the Defendants, Frontier Industrial

Corporation, Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope Mingo Junction Steel Works, LLC, Rocky Rift Consulting, Inc., Panhandle Cleaning and Restoration, Inc., and SCM Engineered Demolition & Explosives Inc., jointly and severally.

4. Such other relief as the Court may seem appropriate to make Plaintiffs whole and to deter and prevent such conduct in the future and punish the defendants for said actions alleged herein.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on Counts 2, 3, 4, 5, 6, 7, 8, and 9 herein.

PLAINTIFFS as named above.

Non-responsive based on revised scope
Non-responsive based on revised scope
Non-responsive based on revised scope

Michael Edward Nogay (W. Va. Bar #2744)

James J. Sellitti (W. Va. Bar #3333)

Maximillian F. Nogay (W. Va. Bar #13445)

Counsel for Plaintiffs

Sellitti, Nogay & Nogay, PLLC

P.O. Box 3095

Weirton, WV 26062

Phone: (304) 723-1400

Facsimile: (304) 723-3252

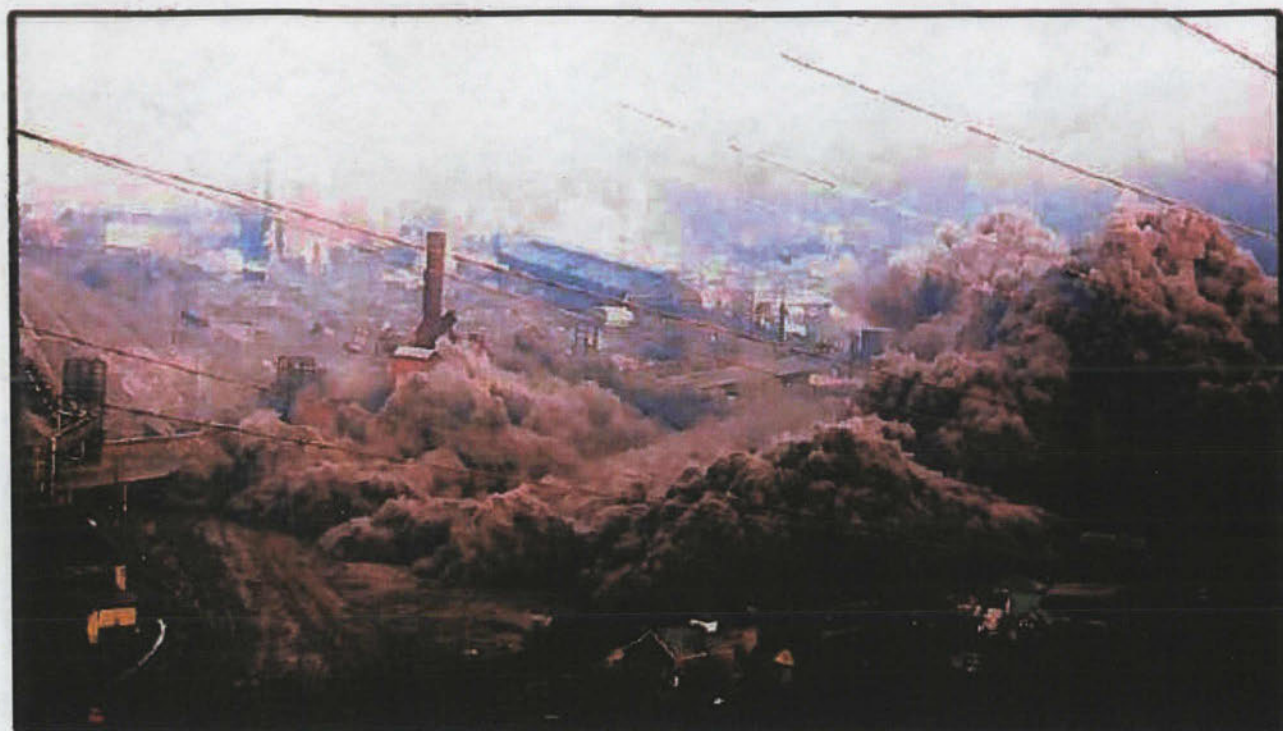
Non-responsive based on revised scope
Non-responsive based on revised scope

Max@NogayLaw.com



EXHIBIT

B







EXHIBIT

D